IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.516 of 2005

Date of decision 19.9.2007

State of H.P. and others Petitioners

Vs.

Bajja and another Respondents

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] No.

For the Petitioners: Mr.M.S.Chandel, Advocate General, with Mr.M.A.Khan and Mrs.Meenakshi Sharma, Deputy Advocate Generals.

For the respondents: Mr.Ashwani Pathak, Advocate.

Rajiv Sharma, J.

A challenge has been laid to the Award passed by the Labour Court-cum-Industrial Tribunal, Dharamshala on 20.11.2004 in Reference No.138/99 (RBT No.252/04).

The brief facts necessary for the adjudication of this petition are that the State Government had made the following reference to the Labour Court-cum-Industrial Tribunal vide a letter dated 3.8.1999:

> "Whether the termination of services of S/Shri Beja and Bhola Ram, Ex-daily wages Beldars w.e.f.13.6.1997 and 12.6.1997 respectively by the Executive Engineer, HP PWD, Salooni Division Salooni District Chamba, H.P. orally without compliance of Section

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[1] Whether reporter of local papers are allowed to see the judgment ? No.

25(G) of the Industrial Disputes Act, 1947, is legal and justified, if not, to what relief of service benefits and amount of compensation, the above workmen are entitled?"

After the issuance of the notice by the Labour Court the respondents hereinafter referred to as the workmen for convenience sake had filed their statement of claims. The primary contention of the workmen before the Labour Court was that they were engaged in the month of July, 1994 and had been retrenched without following the mandatory provisions of Industrial Disputes Act, 1947 w.e.f. 12.6.1997 and 13.6.1997, respectively. It was also contended before the Labour Court that persons, namely, Man Singh, Hem Raj and Madho Ram though juniors to them were retained at the time of effecting their retrenchment. The employer had contested the claims filed by the workmen. The Labour Court on the basis of the material brought on record has passed the award in affirmative on 20.11.2004.

Mrs.Meenakshi Sharma, the learned Deputy Advocate General had strenuously argued that the Labour Court had exceeded its jurisdiction while answering the award in affirmative on 20.11.2004. The learned Deputy Advocate General had further contended that the Labour Court had not taken into consideration the well entrenched principles of Industrial Law while answering the Award. She had also contended that the workmen could not be granted back wages since no material has been placed by them to substantiate that they were not gainfully employed after their retrenchment. Mr.Ashwani Pathak, learned counsel appearing for the respondents had supported the award dated 20.11.2004.

I have heard the learned counsel for the parties and have gone through the record carefully.

The workmen were engaged in the month of July, 1994 as daily wage Beldars. They had worked up to 12.6.1997 and 13.6.1997, respectively. The respondent No.1 i.e. Baija had appeared as PW-1 and testified that persons, namely, Madho Ram and Hem Raj were retained while retrenching him on 13.6.1997 though both of them were juniors to him. He had also testified that he was prevented by the employer from completing 240 days. The respondent No.2 i.e. Bheelo Ram appeared as PW-2 and supported the version of PW-1 that persons junior to him were retained while retrenching him. The employer had admitted in its reply filed to the statement of claims that Madho Ram son of Bhagi Ram was junior to respondents No.1 and 2 and was still working in the Department. It is also evident from the man days chart annexed with the reply filed by the employer to the statement of claims of the workmen that Madho Ram was engaged on 15.9.1994 and respondents No.1 and 2 on 22nd and 23rd July, 1994 respectively. Though the Labour Curt had given a finding that Man Singh and Hem Raj were also juniors to the respondents No.1 and 2 but it is not factually correct. It is evident from the man days chart annexed with the reply that Man Singh was engaged in the year 1991 and Hem Raj was engaged on 23.5.1994. Madho Ram was admittedly junior to respondents No.1 and 2 but he was retained at the time of retrenchment of respondents No.1 and 2. As such the workmen were entitled to protection under Section 25(G) of the Industrial Disputes Act. The employer was bound to follow the principle of 'first come last go'. The contention of the learned Deputy Advocate General that the workmen had not completed 240 days and was not entitled to the benefit of Section 25(G) of the Act is no more *res integra* in view of the law laid down in **Central Bank of India vs. S.Satyam and others**, (1996) 5 SCC 419. Their Lordships have held as under:

> Chapter V-! deals with all retrenchments while Section 25-F is confined only to the mode of retrenchment of workmen in continuous service for not less than one year. Section 25-G prescribes the principle for retrenchment and applies ordinarily the principle of "last come first go" which is not confined only to workmen who have been in continuous service for not less than one year, covered by Section 25-F."

Accordingly it is decided that the retrenchment of the workmen was in violation of Section 25(G) of the Act. The court has now to consider whether the Labour Court was correct in holding and directing the reinstatement of the workmen with all consequential benefits or not. The workmen have not stated anything in their statement whether they were gainfully employed or not after their retrenchment. In application filed under Section 17-B of the Industrial Disputes Act being CMP No.20 of 2006 duly supported by an affidavit, it has been averred that both respondents remained unemployed during the period commencing from the date of their retrenchment till the date of filing the application. They have further stated in their application that they were not employed in any establishment gainfully during all these years. This material brought on record by the workmen had not been specifically rebutted by the employer. Once the workmen had made a statement on affidavit it was incumbent upon the employer to rebut the same by adducing conclusive evidence.

The workmen were engaged in the year 1994 and their retrenchment was effected in the year 1997 and the reference was made by the State Government on 3.8.1999. Though there is no inordinate delay in seeking the reference by the workmen but in the totality of facts and circumstances of the case, the Labour Court should have awarded only

50% back wages with continuity in service. Accordingly the Award dated 20.11.2004 is modified only to the extent that the workmen will be entitled to 50% back wages with continuity in service and the rest of the award is upheld. Accordingly the writ petition is partly allowed and the award will stand modified as observed here in above.

September 19, 2007 (g) **(Rajiv Sharma), J.**